

INTERSTATE COMMERCE.

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25

SPEECH

OF

HON. JOHN W. STEWART,  
OF VERMONT. N.H. 1846

IN THE

HOUSE OF REPRESENTATIVES,

WEDNESDAY, DECEMBER 10, 1884.

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WASHINGTON.  
1884.

S P E E C H  
OF  
HON. JOHN W. STEWART,

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The House having under consideration the bill (H. R. 5461) to establish a board of commissioners of interstate commerce and to regulate such commerce—

Mr. STEWART, of Vermont, said:

Mr. SPEAKER: I had supposed at this date in the nineteenth century that no question could be made as to the constitutional power of Congress to deal with the subject embraced in these bills before the House. It is too late for that. The Constitution has proved elastic enough to meet more urgent emergencies than this. The occupation of the strict constructionist is gone. If we hear anything from him now and then it comes with a qualification which yields gracefully whenever the Constitution is stretched for the benefit of his particular section. We have not only the specific clause of the Constitution under which these bills are introduced, which gives to Congress the power to regulate interstate commerce, but we have that other general clause of the Constitution, to which in emergencies we can fall back—the general-welfare clause. We have, beyond that, the doctrine to which the Supreme Court has more than hinted in a recent decision that Congress has power to do anything which the Constitution does not forbid.

Now, Mr. Speaker, it is no part of my purpose to consume the time of this House in the discussion of any constitutional question, or the constitutional right of Congress to deal with this subject. It is a subject whose importance is commensurate with its magnitude, and its magnitude is as wide as the country itself. We have 125,000 miles of railway, represented by twelve hundred different corporations. With two or three exceptions, these corporations are the creatures of State Legislatures and subject to State laws.

These roads ramify and extend all over the continent. They touch the interests of every man, woman, and child in the country. There is not a producer, a manufacturer, a consumer, a laborer, however humble, that is not interested in the question before the House. Further than that, the securities of these 125,000 miles of railway, representing \$7,000,000,000 of money at the actual cash value of the roads to-day, are in the savings institutions, in the stockings, in the depositories of securities in every hamlet in the land, and anything which affects the value of these securities, any legislation which can affect them in any way, ought to be most carefully drawn and cautiously considered.

How shall we deal with this great question? It is a most intricate problem, and though men may think otherwise, when they have come to give it careful study and investigation they will find serious difficulties involved in any attempt to regulate it by legislation.

How shall it be done? Two methods are proposed in substance by the two bills before the House. Both recognize the necessity of remedial legislation to correct existing abuses and, as far as may be, to overcome their liability to recurrence. The duty of the carrier may be ex-

pressed in a single sentence: His charges should be reasonable, and, as between his customers, just and equitable. And this comprises the whole of it.

The violation of this plain principle furnishes the only just ground of complaint. So far we all agree. The friends of the respective bills before the House are in disagreement as to the method, and as it seems to me the methods proposed by these two bills are radically different. The bill reported from the committee affirms and emphasizes the common-law principle governing common carriers, forbids their violation, provides penalties, and affords sure and speedy relief therefor. It recognizes the existence of those natural principles of commercial law which antedate statutes, and which inspire all wise legislation; and it undertakes to work with and supplement them. On the other hand, the substitute bill thrusts into this intricate problem artificial, arbitrary, and inflexible rules not of universal application, and which in many cases, in my judgment, would work the very mischiefs sought to be remedied. I refer to the provisions of the substitute bill which forbid absolutely a greater charge for a short than for a long haul; which absolutely prohibit rebates and drawbacks, as well as the combinations denominated pools.

Mr. Speaker, there is no real antagonism between the carrier and the customer, and this fundamental truth should not be lost sight of. The real interest of the carrier is to stimulate production. His prosperity is but the echo of the general prosperity on his line of transportation. No man knows better than the intelligent carrier that his dividends depend upon the general thrift of the people whom he serves. If his rates are fixed so high as to depress business and discourage enterprise his next balance-sheet will make sure reminder of his error. This is the first law which applies upon this great subject and influences the result. There is a community and a reciprocity of interest—actual, real interest—between the carrier and the customer. Then come in the laws of competition, which are constantly at work to modify and correct injustice and to produce a correct result. The roads compete with one another, they compete with water ways, they compete with Canadian corporations, they compete in the market to which the product is sent. The competition in foreign markets of the product they carry is in itself an element which enters into the problem.

Now, these are the great regulators of railroad traffic: First, the reciprocal interest between the carrier and the customer, which is an ever-present existing fact, which every intelligent man must recognize. Secondly, this law of competition which, like the law of supply and demand, is unceasingly at work. These, I say, are the two regulators, Mr. Speaker, of this great subject, the law of reciprocal advantages between the carrier and the customer. The laws of trade which flow from competition are as constant in operation as the law of gravity itself; and in spite of the greed of contending managers, in spite of the insolence and arrogance and the blind unwisdom of men, they are constantly and effectually at work to correct abuses and to make proper equation between apparent conflicting interests.

Mr. Speaker, the only healthy and wise system of law which can work successfully and effectively in the solution of this problem is that which works with the natural law. Men can employ the great agencies of nature, steam, electricity, and the like, and produce grand results, and they do it by working with the laws which govern these forces and not against them. There is what I might describe in this

railroad system, as there is in every social system, a principle which answers to what the physiologists denominate the *vis medicatrix* in the human system; to paraphrase a famous saying of Matthew Arnold, there is a power in the social system which makes for health and for the correction of abuses. It is a constantly working force, and if men had patience oftentimes to await the solution of vexing problems through these natural laws, the cure, wrought slowly perhaps, but surely, as nature ever works, would be final and effective.

Now, Mr. Speaker, I desire to call the attention of the House for a moment to the reasoning, which seems to me unanswerable, applicable to those clauses which the distinguished chairman of the Committee on Commerce insists upon ingrafting upon our legislation. He says, in the first place, that no railway in this country in the conduct of interstate commerce shall charge more for a short than for a long haul. As has been said, that seems to be just; as a general rule or as a general principle applicable to railroad traffic it is just. But it is not universally true; and if it is not universally true it should not be applied as an inflexible rule of law to the government of railways. They should be left to the laws of trade and of commerce and to the natural and healthful operation of those laws for the correction of the abuse, if there is any abuse, growing out of the violation of this general principle. Its rigid application would often result injuriously both to carrier and shipper. There is a lurking fallacy in the principle contended for. It takes into account only a single factor in a complex problem, to wit, distance. Rates, either direct or relative, can not be fixed by that standard alone.

It is not true that the short-haul shipper is wronged because he pays a higher rate for a less distance than the more distant shipper who lives at the point of competition. He is only wronged when he pays more than a reasonable rate for the service rendered him, taking into account all the circumstances of the situation, the reasonableness of the cost of the service to the short-haul shipper, the undoubted right of the railroad to fix rates at a standard sufficient to defray expenses and pay a fair profit on the plant, the relative advantage of position of the short and long haul shipper through natural causes, the necessities which the law of competition at important points thrusts upon the carrier, a due consideration to the general good which may be advanced without wrong to the citizen or the railway—these are some of the many factors which enter into the problem presented.

Take the illustration referred to by my friend from Massachusetts [Mr. LONG]—and it is a very good one; one that was used before the committee. A railway from New Orleans to Memphis passes at an intermediate point an internal station called Winona. The Winona man pays, say, \$2.50 per bale for the transportation of his cotton from that point to New Orleans. The railway company says to shippers of cotton at Memphis, "We will take your cotton at \$1 per bale to New Orleans in competition with the river and make a small profit." The shipper there says, "I will not send my cotton by your railway unless you take it at that price, because I can send it by barge or by steamer at that price or less"—75 cents per bale, I think, was the rate.

Mr. WOODWARD. One dollar.

Mr. STEWART, of Vermont. Very well; what will the railway manager do under those circumstances? The application of the Reagan bill would say he shall not take that freight from Memphis. Does it do any harm to the shipper at Winona? Nobody pretends it harms

him. If the railway charges no more than the service is actually worth to him, and no more than they are entitled to charge under their charter for the performance of the service, who is wronged? If the railway makes a small profit by taking this cotton from Memphis, it is for the benefit not only of the railway, but of the local shipper, because it enables the railway under those circumstances to give better terms to the local shipper. Everything which swells income, everything which give increased competition to those who have cotton to ship, is an advantage to the State of Mississippi. And I say that where there is a general advantage in a railway policy, and nobody is hurt, the application of this principle would work disastrously. It is for that reason I am opposed to it.

Nor is it true universally, Mr. Speaker, that because railways under these circumstances can afford to carry that freight from Memphis for a dollar, to New Orleans, therefore they can afford to carry the local freight at the same rate. That is not true. There is not a railway man in the United States that would not deny it. I do not suppose that the gentlemen on this floor who advocate this bill will stand up here and say that all the railway men in the United States who have uttered any sentiment on this subject, the most honorable men, the most upright men, as well as the most enterprising men representing these great interests in this country, would come before this committee and stultify themselves and falsify for the sake of this advantage. Those experts represent to us that they can take freight, for example in the instance I have named, from the city of Memphis to the city of New Orleans and can make a small profit on it, because they say, "We have our roadway, we have our plant, we have our cars, we have our employés, and we can take this and make on the whole a small profit; now let us do it." But this bill reported as a substitute, omitting to take into account this matter of competition, omitting to take into account the general interests of all concerned, undertakes to put an absolute, arbitrary, and inflexible rule into this delicate and intricate machinery, a rule which will work the very wrong intended to be remedied.

There is another illustration cited to the committee. The railways from New York to the city of New Orleans dare to compete with coastwise carriers to that point. Do we not desire to encourage competition? Do you wish to destroy competition? How can those railroads compete? Only in one way—by putting the through rates from New York to New Orleans at 76 cents a ton. The railway rate from New York to Atlanta is \$1 a ton. Has the Atlanta man any right to complain if the railroad company imposes only a reasonable charge for the service rendered him? That is all he has a right to claim; and no fair-minded man, it seems to me, who looks that proposition squarely in the face, can deny it. That is a just principle which should govern the relations between the shipper and the railroad manager. The shipper at Atlanta will not get his freight any cheaper if you say the railroad company shall not carry freight for a little less to the city of New Orleans. On the contrary, the ability of the railroad to give him cheaper rates is cut off, and competition to New Orleans is rendered impossible.

It is not true that the local freight is taxed in order that the railroads may carry through freight at a less rate; and I undertake to say, Mr. Speaker, that in this widely extended country, where terminal points are so remote from each other, and where the transportation of a vast amount of freight at minimum rates is constantly necessary, the appli-

eration of this rule will work nothing but injury to the great interests of the country.

Now, in regard to rebates, the clause in the bill reported by the committee is carefully guarded. It is said that rebates are always, absolutely and unconditionally, an evil—unjust and wrong in principle. Why, Mr. Speaker, there is not any abstract rule applicable to this subject anywhere. This is the most practical question that ever confronted human intelligence. If men straddle abstractions, if they insist upon resting in abstractions on this subject, they are likely to go astray. The question is, how does this matter work in practice? Is it true that a rebate is absolutely, essentially, and under all circumstances wrong? I deny it. Instances have been shown before the committee, and instances can be mentioned before this House, which absolutely disprove it.

Now here are eight or ten—I think eight—great trunk railroads running eastward from Chicago to the New York market. They compete with each other. There is no difficulty in each road making independently its own rates. I make a rate this morning with the Erie road for one hundred car-loads of pork from Chicago to New York with a narrow margin of profit. My friend from Massachusetts [Mr. RANNEY] makes a rate on the same day for the same kind and amount of freight to New York, by the New York Central Railroad. I send mine at 75 cents a hundred; he sends his at 50 cents a hundred. There is no common understanding. The Reagan bill says there shall not be any. The Reagan bill says there shall be no combination which shall prevent this injurious competition, this competition which works the worst kind of discrimination between the dealers in the same article. What then? How can this matter be corrected? Shall I go to New York and when I discover that another man has an advantage of 25 cents a hundred over me, go to the railroad company and say, "I suppose you intend to do business on fair principles as regards your neighbors?" The company says, "Certainly." "Then I want you to give me a rebate which shall put me on an equality with my friend, who from another company has obtained a less rate." Is there any injustice in that? Does it not wipe out the very discrimination which is sought to be obviated in this bill? If you adopt the rigid rule of the Reagan bill the hands of the railroad companies are tied, and they can not correct such a wrong.

Again, take the matter of exports. The Reagan bill says that the railroad companies shall not vary from their published tariffs; that when they have agreed upon a tariff they must not change it. They can not change their tariff very often; they can not change it without notice. Now, suppose products designed for export go to New York, and then it is found they can not be exported and meet competition in foreign markets unless the rates are reduced, are you going to cut off the foreign market from the Western producer and say peremptorily, absolutely, and arbitrarily that the railroad companies shall not make a rebate in order that these producers may ship their freight to Liverpool? That is the effect of the provision of the Reagan bill—the inevitable effect of it. The testimony of every intelligent railroad-man goes to this point. Are you going to say in the first place that the railways shall not combine to fix rates, shall not form what is called a "pool" in order to avoid this injurious competition (of which I shall have a word to say presently), and then say further that when freight reaches the seaport from which it is designed to be shipped the com-

panies shall not make a rebate in order that the producer may export it and find a market for it? Are you going to tie the hands of the railroad companies so that produce shall rot at the seaport or at the point from which it would be sent because it can not be exported? Is there any wisdom in the application of such an inflexible rule as that?

Take the case of staves, the case already referred to. These railroads carry staves to New York, all of them, at the same rate. They are not at liberty to vary their tariff, and ought not to do so. Now, suppose I am an exporter of staves in New York and my friend from Illinois [Mr. SPRINGER] is a dealer in staves there. I can not export those staves to compete with the European dealer in that article unless the railroad will give me a rebate. Does it hurt him if they give me a rebate under those circumstances, and allow me to find a market abroad when I can not get one at home?

Is this the encouragement of American commerce? Is this the proper regulation of interstate commerce? I deny it.

Mr. REAGAN. Will the gentleman allow me to ask him a question?

Mr. STEWART, of Vermont. Certainly.

Mr. REAGAN. Would it not be just to allow the same rebate allowed to one person to another person hauling the same goods over the same route?

Mr. STEWART, of Vermont. That depends. In the case I suppose it would be just, because the staves exported and on which rebate was allowed would not in any sense interfere with the regular market or prejudice any consignee.

Mr. REAGAN. Then why not give all persons interested in the same trade—and I do not wish to be considered as interfering with my friend's argument, but if he wishes to accomplish the object which he seems to seek, that of reduction of freight charges, why, let me ask, not give the same rebate to all persons engaged in hauling the same character of commodities? Why punish one part of the people by advantages bestowed upon all others?

Mr. DAVIS, of Illinois. The Judge should put his question this way: Would it not be unjust to not allow this rebate to another man shipping staves to the same market when it is allowed to one man?

Mr. STEWART, of Vermont. As I have stated in the case suggested, if rebate was given to the other man then it would be unjust.

Mr. REAGAN. On the principle for which I am contending the application of a rebate should be made to all persons at the same time doing the same sort of business. That places everybody on terms of equality and will allow advantage to no one person or persons to the disadvantage of any others. Let me ask the gentleman whether it would not be safer and better to reduce freights to all—that is, that the railways should make their schedules lower to the extent at least to which they allow rebate?

Mr. STEWART, of Vermont. That suggests the very difficulty of dealing with it by arbitrary legislation. If you put the freight so low so the exporter can export his staves you put them so low the business at home is done at loss to the railway. As was in evidence before the committee, they gave an exporter of staves a rebate because they desired to encourage foreign commerce. They would have made more money by holding the exporter of staves to the tariff price, but they gave him a rebate not for their own advantage but for the general advantage, and it harmed nobody. Will it be pretended a principle which works practically in favor of an increased exportation, which widens the market of

American commerce, is an injurious principle when it harms nobody? Tariffs are constantly fluctuating because tariffs have to follow prices and prices fluctuate in the market. So far as the foreign markets are concerned they govern prices. You can not export wheat from Chicago to Liverpool without reference to the price of wheat in Liverpool. That is one of the elements which enters into the problem and helps to settle and regulate it, and it is one of the reasons why the railroads are unable to charge arbitrarily a high price. They are governed because they are under these laws which they can not repeal.

Now, I come to the consideration for one moment of the subject of competition—a subject which I think is not thoroughly understood; I certainly never understood it until I turned my attention to it, I mean in its application to the railway traffic. Competition is a thing which we all desire. We want to cultivate it. The elements of competition in the railway system of this country are fixed and sure and no legislation can repeal them. There is not a great transcontinental line from the seaboard to the Mississippi or from the lakes to the Gulf that is not controlled, absolutely controlled, by this competition in the fixing of the rates. The water rates control the railway, for they can not charge without reference to the water rates. The water rates compete with them. The railroads compete with the great water ways, the lakes, the Welland Canal, the Erie Canal, the Ohio River, the Mississippi River, the Cumberland River, and the Tennessee River. Everything that affects either one of these great lines affects them all.

The moment the price drops in Chicago it must drop at Indianapolis and at Saint Louis and at Louisville; and whenever the price drops in Liverpool it must drop all along the line or else the traffic will be diverted from them. Otherwise the great trunk lines running east would have the traffic diverted from them and shipments would run crosswise to the line which gives the cheapest rates. There is no doubt of that. It is an interlacing and interdependence of interests multitudinous and conflicting, and which the enactments of man in the cold, frigid, stern rules of law, I undertake to say, can not successfully control or govern.

Now, competition within certain limits is properly competition; but when such competition, so called, transcends certain limits it ceases to be competition in the proper sense of the word and becomes war, reckless and ruinous to all interests. Roads should and do compete down to a point where they can carry traffic at the lowest rate which will enable them to pay a reasonable profit upon it; but the moment they go below that rate it ceases to be competition, and if it be called competition when it reaches a figure below that point then it becomes an injury not only to the roads but to the business of the country. That is so obvious a proposition that it goes without saying. You make your rates to-day with one road, and under the circumstances I have suggested they are 40 cents lower before night and somebody else gets the benefit of the different rate. The shipper of the same sort of goods on the same day—if you have a railroad war, which some denominate competition—the shippers of the same character of goods, the shippers of the same articles precisely on the same day may get a rate varying from \$1 to 10 cents, or nothing. That, I maintain, is not competition. It is not the competition that the Congress of the United States should encourage. It unsettles values; it induces wild speculation; it bankrupts railroads, and bankrupt railroads are of no service in this country. We have had 20,000 miles of such roads, of which the stock has been entirely wiped out.



Now, how shall we correct the evil? There is nothing in the Reagan bill, so called, to correct it. There is a principle there which, on the contrary, absolutely forbids every attempt to correct it. Now, I am not in favor, Mr. Speaker, of an unconditional and absolute surrender of this subject to a combination of railroad-men to do what they please in the way of pooling or otherwise. I am as well aware as any man can be that there is a possibility of combination (though it is extremely improbable and never yet has been done, in my judgment certainly there is no proof before the committee that it ever took place), but a possibility of combinations between railroads which would have the effect of raising prices of freights beyond a just and reasonable and proper charge for the service. If any such instances ever occurred, I say there is no evidence before the committee.

Mr. Speaker, how shall competition, which degenerates into ruinous and destructive wars on all interests, be overcome or prevented?

Well, I confess, sir, that, studying the problem for many months as I have, I can not see any possible way by which it can be overcome except by these very combinations. Combination within certain limitations is just as legitimate as competition; and these two opposing principles, if rightly balanced, will regulate the whole subject. There is no doubt of it. If you have eight trunk lines running from Chicago to the seaboard, and they are cutting rates and unsettling the market, unsettling values, inducing wild speculations where the chances can not be calculated, and bankrupting themselves, what is the result? It may be said that they do it voluntarily. Very well; that is the law of human nature. If one road cuts the rates it will get the freight unless the other roads cut the rates too; and then when another road cuts a little lower the others must follow or lose the business. What is the remedy? Why, there is no cure except in a common agreement between the roads as to the rates and a determined policy of standing by them without violation. If they do that nobody has the right to complain. If they abuse the power and fix exorbitant, unjust, unreasonable rates everybody has the right to complain. Why here come in and apply all of the principles to which I have already alluded—the competitive water way, the market abroad? Rival roads working together to establish and maintain reasonable rates form a combination of competitive elements. Such a combination, under the safeguards guaranteed by the amendment proposed by Mr. SEYMOUR, the gentleman from Connecticut, furnishes, in my judgment, the only practical method of prevention of railroad wars, which are admittedly ruinous and a most prolific source of unjust discrimination.

Now, the amendment proposed by the gentleman from Connecticut [Mr. SEYMOUR], meets my hearty concurrence, and I think if Congress would ingraft this upon these provisions of the bill that the pooling system could work no possible harm and might afford a solution of the problem which the railways themselves have been trying for a long time to solve. The amendment is designed to cure the evils of competitive strife.

Mr. LONG. It refers to the pooling of the business of the roads.

Mr. STEWART, of Vermont. Yes; to the pooling system. The amendment proposes in section 4, line 14, referring to this question of pooling:

The intent, purpose, and effect of which is to raise charges above reasonable rates, or to divide the earnings on any other basis than a reasonable accordance with the service respectively rendered by such roads, or to impair reasonable competition; and every such contract shall be open and in writing, and a

copy thereof shall, as soon as the original is executed, be sent by the parties thereto to the board of commissioners hereinafter created.

Now, if this provision is carefully guarded no harm can possibly come to the public thereby, and no harm to the railway service.

You put on foot an instrumentality by which this destructive cutting of rates will be measurably prevented—not absolutely. It will not be in the power of legislation or anything else absolutely to prevent it. But all legislation is really approximation. I do not pretend the bill reported by this committee is perfect. I do not think it is in the power of man to frame a bill now in advance which will meet every requirement. It is what is called tentative; it is initiative. But I believe if this provision is ingrafted upon a permission to make a pool, everybody will be served and everybody will be secured, and there will be a remedy for the evil of which my friend from Texas [Mr. REAGAN] complains, and which I would avoid with as much earnestness as he, for I am as much opposed to unjust discrimination on the part of these powerful corporations injurious to the rights of any citizen as he is. But I differ with him essentially as to the methods by which this result is to be secured.

The rules, Mr. Speaker, which are applicable to this case must be elastic and should have genesis in the conditions of each case. These conditions which surround railway traffic are infinitely varied; they can not without injury to all interests concerned be subjected to artificial, unvarying rules imposed by the Government. The only solution, in my view, of the difficulties with which this great subject bristles is through the harmonious co-operation of the common law and the natural laws to which I have referred, re-enforced by legislation working with and never against them, which shall supply machinery for their sure and summary enforcement in case of need.

And this brings me, Mr. Speaker, to the consideration of what I regard as the most important feature in this bill. I do not claim to be wise above my day or above my fellows, but I must say that it seems to me so perfectly clear that the only effective way to remedy evils which are admitted to exist is through the influence and power of a railway commission that any other legislation than that seems to me absolutely valueless and it may be mischievous.

I was somewhat amused at the criticisms made by my friend from Pennsylvania [Mr. BOYLE] yesterday. He, as we know, is a very acute lawyer, and he argued this question from the standpoint of an acute and an able lawyer. He made a very clear-headed presentation of the case from his standpoint. It was just such an argument as I have listened to many a time in court from a lawyer who carefully concealed everything that was valuable and strong in his adversary's case, and directed all his efforts to expose its weakness. He took up the points one after another, instead of grouping them and looking at them as a whole; just as one might separate a bundle of sticks or the strands of a cable, each one of which considered by itself is a slender and weak thing, but when bound together you find it is a whole having coherence and strength which can hold a tempest-tossed ship. Now, what is my friend's objection? Why, it is the same objection in substance that my distinguished friend from Texas, the chairman of the committee, stated in a general way, and that is that this commission is wholly insufficient. It has no power to do anything—that is to say, it does not afford any remedy to the party injured.

Why, Mr. Speaker, it is a remedy in addition to all the remedies

which the gentleman affords in this bill. The party has the same right to go into court in the committee's bill as in his bill. He is subjected to not quite so severe penalties, but he is subjected to penalties in this bill for violation of the general principles which we say should govern railway managers. What is the trouble? The gentleman says it is not efficient enough; when you come to sum it up this commission has not power to render a final judgment and enforce its judgment by execution. That is the sum and substance of the objection. Now, both those gentlemen are too good lawyers not to understand that it is not in our power to create such a commission. We have given this commission more powers than any railway commission has ever had in this country; we give them full power to investigate. They are the ear of the Government to listen to complaint; they are the right hand of the Government to put in operation machinery in favor of the humblest and the weakest citizen of this Government who seeks redress.

My friend from Pennsylvania complains because the redress afforded is not full and sufficient. It goes just as far as the law will allow it to go. Commissions elsewhere in the States are clothed with no judicial or executive power. They do not render final judgment; they have no power to issue injunctions; they have no power to make any peremptory orders. Such a commission is a board of investigation, a board of inquiry, and a board of advice, representing the sovereignty of the State as this proposed commission would represent the sovereignty of 60,000,000 people.

It is idle, Mr. Speaker, for a gentleman to belittle the power and the influence of such a board as this bill contemplates. Any man who knows anything of the railway management in this country knows that railway managers may be arrogant; great power begets pride, and great power begets arrogance; it is a temptation to injustice. And it is for that reason, Mr. Speaker, that it has seemed to me wise, inasmuch as this great power, this *imperium in imperio*, has grown up in this Government and has excited the fears of many people because of its possible malign influence upon legislation and upon the judicial operations of the country—it has seemed to me proper, in view of the general feeling upon this subject, in view of the situation of affairs, that some representative of this Government should stand between the people and the railways impartial and not in a threatening or hostile attitude to the railways, but there simply as the watchful guardian of the rights of the people, or, as I have said, the ear and the arm of the Government to hear and to guard.

Mr. WARNER, of Ohio. Will the gentleman allow me to ask him a question?

Mr. STEWART, of Vermont. Certainly.

Mr. WARNER, of Ohio. Do I understand the gentleman to take the position that, in constituting a commission as proposed in the committee bill, Congress would go the full extent of its constitutional power; in other words, that it would give to this commission all the power it can exercise under the Constitution?

Mr. STEWART, of Vermont. I do not say that. I say that, as I understand the Constitution and the judicial system of our Government, Congress can not establish this commission as a judicial body without giving its members life-tenure. As I understand the Constitution of this Government, you can not give this board judicial power to hear and determine finally and to execute their judgment through final process unless you give the members of the commission life-tenure; and that we do not want to do.

Let me say here that this provision is drawn in conformity and analogy with the English practice. Let us review the order of procedure. Any man may make complaint. It is true that the commission is not bound to entertain the complaints of every man; and my friend from Pennsylvania [Mr. BOYLE] made a point in this regard. He said there might be cases where the commissioners would refuse to entertain a complaint, and then the party complaining would be turned over to a district attorney or a county attorney or some officer of that description in some State or Territory of the country. Upon this ground he thought the provision objectionable. I say that is one of the merits of the bill. I beg leave to differ with my learned friend on this point.

Suppose such a board of commissioners as this bill contemplates should be appointed by the Chief Magistrate of this country—President Cleveland, if you please, or by and by President Carlisle, perhaps—will my Democratic friends on this floor say that either of those gentlemen, knowing their action would be reviewed by the Senate, would appoint a board which would not properly exercise the discretionary power to judge as to the propriety of entertaining complaints of this character?

Mr. BOYLE. Is any court in this country armed with such discretion that it may hear the complaint of one man and refuse to hear the complaint of another?

Mr. STEWART, of Vermont. No court is armed with any such power. But this is not a court. That is the very point. It is not intended to be a court. It is intended to be a guardian, a watchful and impartial guardian of the rights of all. It is intended to listen and to investigate and to set this machinery in motion if in its judgment, upon consideration of all the circumstances of the case, it is wise to do so.

Now, my friend knows perfectly well that under this great system of railways there might be, and would undoubtedly be, a great many frivolous complaints; there would be a great many malicious complaints, and it is not that sort of complaints that the law is intended to meet; it is not that sort of difficulty that we are trying to cure. We are trying to cure real substantial evils existing in this country, and I say this machinery is adequate for the purpose. If you constitute such a board as this you may safely intrust to it the discretionary power to say whether it will entertain complaints or not.

That is the first point. Now, this board will have power to go on and investigate. It is true the investigation of the board does not ripen into judgment. Perhaps the bill should go a little further and say that where a man claims damages the commission should inquire and report its judgment as to the amount of damages that should be given. I should have no objection to such an amendment. I think on the whole it would be an improvement, although such a power would be in the nature of a final judgment.

Now, I understand perfectly well that a well-trained lawyer like my friend from Pennsylvania is very apt to pooch-pooch the judgment or finding of such a tribunal. We are accustomed to respect courts that not only have the authority to render judgments but are clothed with power to execute them; and we are disposed to say with reference to such a proposition as this: "This is nonsense; because it does not result in anything absolute and final." But I think my friend and gentlemen who think with him on this subject underestimate the moral power of such a board as this. I undertake to say that the very existence of such a board, representing the sovereignty of this Govern-

ment and the concrete will and purpose of the American people to see that justice is done, would exercise a powerful and a controlling influence upon the great corporations of this country. I have not a doubt of it, and I do not believe my friend has. If Charles Francis Adams, who is an expert on this subject, a man whose character is above all possible reproach, should be associated with two other men competent to deal with this subject—if a board thus constructed should sit and hear complaints of this sort, listen to the evidence carefully and patiently, upon notice to both sides, and should then come to a finding, do you suppose, Mr. Speaker, that there is any railroad in this country that would not respect such a finding? There would never be any occasion to invoke the aid of a court after such a finding.

Again, I have heard it intimated by some gentlemen that you can not trust the President and the Senate to appoint a board of men who should be superior to the malign influence of the combined corporations of this country. I do not know that any such sentiment has found utterance upon the floor of this House. I should be sorry to hear that stated here as the deliberate conviction of any man who claims to be a democrat; for if a man comes to that he has lost faith in republican institutions and he has lost faith in the people. But it is not true, Mr. Speaker. The President and the Senate of the country, I believe, can safely be intrusted with (and I would as soon trust to the President of one party as to the President of the other party) the duty of selecting a board of able, fearless, impartial men who shall stand as the representatives of the country to keep these corporations within their proper limitations. That is all we ask, and it is all we ought to ask. It does not become the dignity of the American Congress to assail any great interest which has invested in it \$7,000,000,000 of the hard-earned money of the people, and which employs 2,000,000 of citizens in its daily service.

They are entitled to the protection of their rights to the fullest extent, and I understand my respected friend, the chairman of the Committee on Commerce—and I know his sincerity as well as his ability—has no desire or purpose to inflict any wrong on them. But believing, as I do, the measures he seeks to inaugurate are calculated to produce the very evil he would remedy, I would interpose this machinery, which has allied to it the whole judicial power of the United States. Any circuit-court judge anywhere, at any time, in chambers can be called upon promptly and summarily to entertain this subject. Some gentleman said he had not the power to issue a temporary injunction, but that gentleman had not carefully read the bill, and he is mistaken.

Mr. WILSON, of Iowa. I want to ask the gentleman from Vermont a question which involves a difficulty in the minds of a great many members upon the floor, and it is this: Why the Committee on Commerce did not so frame the bill that the commission might determine the amount of damages done to the complainant. If there be any reason why that should be omitted I should like to know it. The State commissioners are allowed the right to fix the damages.

Mr. STEWART, of Vermont. In answer to the gentleman from Iowa, I will say that I know no other reason except probably that it did not occur to the committee. I have already stated that in my judgment such an amendment would add an important feature to this commission. There certainly should be no objection to going one step further where a man claimed damages and allow the commission to give their judgment of the amount of damage sustained by the complainant. It

would not be a judgment such as my friend from Pennsylvania [Mr. BOYLE] would have a great deal of respect for. He would say, perhaps, that it did not amount to much. But when he said that he would look at it from the standpoint of a lawyer and not from the standpoint of a moralist; he would leave out of consideration wholly the moral element. He knows the moral consideration would weigh as strongly with the railways of the country as any proceeding in chancery for injunction.

Now, Mr. Speaker, suppose the bill of my friend from Texas [Mr. REAGAN] is passed and it comes into operation as the law, and some poor fellow in his country starts out to get treble damages, how far do you suppose he would get in remunerating himself for his losses, which might be very small? The very imposition of treble damages imposes a duty on the railway to fight. The very fact the man is to be compensated more than he lost or has sustained is enough to put the railway on the defensive. I think the principle is vicious. It is inequitable and unjust, and I think any man in this country who undertakes under that bill to assert his rights will quite as soon come to grief as any man who should assume to pursue a common-law remedy without any statute at all. It invites defense; it provokes a hostile war; and railways would carry such cases to the last extremity. They do not care so much for proceedings in court; they care a great deal more, as my friend from Massachusetts [Mr. LONG] has stated, for the blaze of public sentiment for the publicity of wrongs and outrages done by them than for any mere judicial proceeding.

Mr. Speaker, at the risk of repetition allow me to summarize my view upon this point. An intelligent, upright, and independent board representing the Government of the people, standing between the people and the railways, charged with the duty of careful supervision of the relations between the two, and clothed with powers sufficient to preserve their just balance, would command the confidence of all parties, and its deliberate hehests would challenge respectful attention and obedience by railway managers.

The bare fact of the existence of such a commission, whose action could be summarily invoked by any citizen, however humble, would exert a strong and constant tendency to bring and keep the management of the roads of the country within the limits of righteous dealing. Notice, too, that the Federal courts are brought into swift concurrent and auxiliary action with the board in the exercise of its functions.

Ample provision is made for speedy and intelligent investigation, while the roads are secured against hasty action by a provision for notice, which gives opportunity for retraction or correction of ascertained error.

The substitute bill leaves the wronged citizen to make alone such case as he may dare to undertake against a powerful and arrogant adversary, and attempts to fortify his weakness by severe penalties of doubtful expediency; while under the committee bill the machinery for redress is put in motion and controlled by a board which represents the sovereign will and purpose of the whole people, not for the enforcement of rigid, artificial, arbitrary rules, often of injurious application, but for the wise enforcement of sound and just general principles, broad enough and flexible enough to meet all emergencies without injury or injustice to either citizen or carrier.